HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 23126 of 2007

26.12.2007

Between:

Dr. Shiva Kumar

… Petitioner

AND

The Government of Andhra Pradesh,
Revenue Department,
Rep. by its District Collector,
Ranga Reddy District & others

… Respondents

Counsel for the petitioner : Sri S. R. Ashok,
Senior Counsel assisted
By Sri C.V.R. Rudra
Prasad

Counsel for the respondent Nos. 1 and 2 : Assistant Government
Pleader for Land
Acquisition.

Counsel for respondent No.3 : Sri K.V. Simhadri

O R D E R:

This writ petition is filed for a writ of mandamus to declare the action of the respondents in seeking to dispossess the petitioner from the land admeasuring Acs. 49-02 guntas situated in Survey Nos., 152/U, 153/U, 181/U, 182/U, 183/U, 184/U, 185/U, 186/U, 187/U, 188/U, 189/U, 190/U, 191/U, 192/U, 193/U and 194/U and Ac. 179.13 guntas forming part of Survey Nos. 182, 185 to 193 ofThummaluru Village, Maheswaram Mandal, Ranga Reddy District as illegal and in violation of the fundamental rights guaranteed under Articles 14 and

19 and the right guaranteed under Article 300-A of the Constitution of India.

The petitioner is undisputedly the owner of Ac.49.02 guntas of land comprised in the above-mentioned survey numbers, which is hereinafter referred to as "the land in dispute". Proceedings under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') were issued on 21.04.2006, for acquiring the said land for expansion of industrial development area (IDA) by respondent No.3. Enquiry under Section 5-A was held on 03.05.2006. Notice under Section 5-A of the Act was said to have been served on one Santhosh Kumar on 08.05.2006. The petitioner claims that since he has not received any such notice, he has not filed his objections against the proposed acquisition. Declaration under Section 6 of the Act was published in Andhra Pradesh Gazette on 06.07.2006 and local news papers on 06.07.2006 and 07.07.2006. Award was passed on 13.11.2006. The petitioner filed the present writ petition on 31.10.2007.

The main grievance of the petitioner is that he has not received any notice either for enquiry purported to have been held under Section 5-A of the Act or for passing the award. The petitioner, therefore, avers that since he has not received notices under Sections 9(3) and 10 of the Act, the award enquiry is vitiated and the award to the extent of the disputed land is liable to be set aside.

Sri P. Ram Gopala Rao, Special Deputy Collector (Land Acquisition), International Airport, Shamshabad filed counter-affidavit on behalf of respondent Nos. 1 and 2. Shri M. Dasaradharam Reddy, Zonal Manger filed counter affidavit on behalf of Andhra Pradesh Industrial Infrastructure Corporation Limited. In the counter-affidavit filed on behalf of respondent Nos. 1 and 2, it is claimed that notice for enquiry under Section 5-A of the Act was served on one Santhosh

Kumar as the petitioner was not available to receive the notice on 08.05.2006. Similarly, it is pleaded that notices under Sections 9(3) and 10 were received by the same Santhosh Kumar on behalf of all the persons and that the same has been certified by Panchayat Secretary, Thummaluru Village.

At the hearing, Sri S.R. Ashok, learned Senior Counsel appearing for the petitioner submitted that his client has nothing to do with the said Santhosh Kumar and that, therefore, notice served on the said Santhosh Kumar cannot be deemed to be served on the petitioner. The learned Senior Counsel contended that service of notice for award enquiry is mandatory under Sections 9(3) and 10(1) of the Act and that since the respondents failed to prove that such a notice was served on the petitioner or his authorized agent, the award is liable to be set aside.

Learned Assistant Government Pleader for Land Acquisition submitted that the record reveals that when the employees of respondent Nos. 1 and 2 went to the locality where the lands are situated, one Santhosh Kumar was available and he received notice under Sections 9(3) and 10 and, therefore, it was deemed that there was proper service of notice.

Sri K.V. Simhadri, learned Standing Counsel for respondent No.3 submitted that in pursuance of the award passed on 13.11.2006, possession was delivered to respondent No.3 on 16.11.2006 and thereafter, it has already started finalizing plans for utilizing the land for the purpose for which it was acquired.

Sections 9(3) and 10 of the Act read as under:

> "**Section 9(3)**: The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents

authorized to receive service on their behalf, within the revenue district in which the land is situate.

Section 10: Power to require and enforce the making of statements as to names and interests:

(1) The Collector may also require any such person to make or deliver to him of a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this Section or Section 9 shall be deemed to be legally bound to do so within the meaning of Section 175 of the Indian Penal code."

I have perused the record produced by the learned Assistant Government Pleader. It is seen from the record that notice issued under Sections 9(3) and 10 of the Act is shown to have been received by a person with signature "Santhosh". It is written in Telugu (after the purported signature "Santhosh Kumar"). The said signature is found against the names of Alopi Shankar, Satyanarayana, Ram Kumar, Krishna Kumar and Shiv Kumar written vertically in English. An endorsement of Panchayat Secretary, Thummaloor Gram Panchayat, Maheswaram Mandal is also contained on the right side bottom of the notice by the side of the signature of the person received with the words written in Telugu "these notices are served on the person shown above".

In the counter-affidavits filed on behalf of respondent Nos. 1 and 2, it is not stated whether the said Santhosh Kumar is authorized by the petitioner to receive the notice on his behalf. Though it is claimed

that he is the family member of the petitioner, no evidence is produced in support of the said averment. The said Santhosh Kumar who is stated to have received the notice has not written on the notice that he is receiving the said notice on behalf of any particular member, much less the petitioner. I am, therefore, of the view that in the absence of any evidence to show that the said Santhosh Kumar is the authorized agent of the petitioner, service on him does not constitute service of notice as envisaged in Sections 9(3) and 10 of the Act. Since the said provisions are couched in mandatory form, violation of the same vitiates the award.

Therefore, award dated 13.11.2006 to the extent of the disputed land namely Ac.49.02 guntas is set aside. Liberty is given to the respondents to initiate award proceedings afresh to the extent of the said land after following due procedure under Sections 9(3) and 10 of the Act. Since there are rival claims to the possession by the petitioner and respondent No.3, the parties shall maintain status quo existing as on today.

Subject to the above observations, the writ petition is allowed.

As a sequel to disposal of the writ petition, W.P.M.P.No. 30134 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

26.12.2007

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